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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,714	11/03/2003	Lanny R. Smith	40059-0010	6022
7590	08/16/2005			EXAMINER
Kulaniakea Fisher Rader, Fishman & Grauer PLLC Ste. 150 10653 S. River Front Pkwy. South Jordan, UT 84095			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 08/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/700,714	SMITH, LANNY R.	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 July 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-33 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 November 2003 and 07 March 2005 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "retractable pool cover" set forth in claims 1, 11, 24 and 31, "guide member" set forth in claim 11, and "method" steps set forth in claims 24 and 31, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant argues at page 12 of the response filed July 05, 2005 the retractable pool cover and guide member "are not included as features of the invention". The examiner can not agree as the noted features are recited in the claims and therefore must be considered "features" of the invention. Applicant further argues at page 12 of the response the method steps are depicted in new Figs. 6A and 6B. The examiner can not agree. Figs. 6A and 6B merely illustrate wording in boxes which does not illustrate any of the actions or steps actually recited in the method claims.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be

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labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The disclosure is objected to because of the following informalities: In the brief description of the drawings, reference to Fig. "6C" apparently should be --6B--.

Appropriate correction is required.

3. Claims 24 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 is unclear as to whether the "elongated track" is intended to be part of the claimed combination since structure

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of the "edging" is defined as being connected thereto (ln. 4), but no positive structural antecedent basis therefor has been defined. Claim 31 is similarly indefinite.

Applicant argues at page 13 of the response the noted claims "have been amended to clarify and better define the claims." However, the claims have not been amended in any significant manner to address the ground of rejection concerning whether the "elongated track" is, or is not, part of the claimed combination.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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5. Claims 1-8, 11-21, 23-27 and 29-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Stegmeier '424 taken with the evidence of Stegmeier '017.

The Stegmeier '424 ('424) reference discloses an apparatus comprising: a form member 28 including a portion 37; a support member 50 including a first portion 76 and a second portion 84; a coupling member 38; and an elongated track 48, as claimed.

Applicant argues at page 14 of the response "Stegmeier ('424) is not an enabling disclosure". This argument is without merit. Notwithstanding '424 being a US patent which is both presumed valid (35 USC 282) and contains disclosure that the form board 28 can be "easily removed" (col. 4 ln. 3), attention is directed to the evidence of Stegmeier '017 ('017) which explicitly teaches how the form member 28 of the '424 disclosure is "removably coupled" to the elongated track 48. Note for example lines 62-68 in column 5 of '017. Applicant argues at page 15 of the response the '424 support member 50 does not allow the form board 28 "to be removed prior to the edging hardening." The examiner can not agree. The '424 reference explicitly teaches removing the form board 28 after the edging 26 has completely set as accurately noted by applicant. This disclosure is sufficient to anticipate the "hardened" language recited in the argued claims. In this regard, it is noted the

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instant disclosure does not provide any special definition for the term "hardened". As a practical matter, applicant's edging 30 must also be "set" before the form member 12 is removed or the concrete material thereof would fall apart due to the action of gravity. Indeed, concrete can take many years to fully cure or "harden". In any event, attention is again directed to the '017 reference which explicitly teaches at lines 56-62 in column 5 that the concrete edging need only be self-sustaining in shape before the form boards 10 can be removed. Furthermore, there is no disclosure in either of the references pertaining to any damage from removing the form boards at the prescribed time whereby claim 5, for example, is also clearly anticipated.

6. Claims 9, 10 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over '424 taken with the evidence of '017, and applicant's admitted prior art.

Although the form member of the '424 apparatus does not include an alignment member, as claimed, attention is directed to applicant's admitted prior art (apa) which discloses an analogous apparatus (Figs. 1 and 2) which further includes an alignment member 49. Therefore, in consideration of apa, it would have been obvious to one of ordinary skill in the art to associate an alignment member with the '424 apparatus in order to facilitate construction.

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Applicant has not substantively addressed this ground of rejection beyond noting claim dependency.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over '424 taken with the evidence of '017, and Bumgarner, Sr.

Although the shape of the '424 form member does not include bull-nose, as claimed, attention is directed to the Bumgarner, Sr. (Bumgarner) reference which discloses an analogous form member 38 which further includes a bull-nose shape (Fig. 3). Therefore, in consideration of Bumgarner, it would have been obvious to one of ordinary skill in the art to associate a bull-nose shape with the '424 form member in order to construct a different, known, edging shape.

Applicant has not substantively addressed this ground of rejection beyond noting claim dependency.

8. Applicant's remarks have been fully considered and have been previously addressed.

9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this

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action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga
Primary Examiner
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